ing to an acquittal is no bar to a second prosecution, as I pointed out earlier, by virtue of the provisions of section 302(v) of the Criminal Procedure Code. And the Federal Court had occasion to restate this patent proposition in a reference pertaining to a discharge granted under the provisions of section 173(g) of the Code in *Chu Chee Peng* v. *Public Prosecutor*[2] when it specifically decided that no appeal is necessary to have an order of discharge made under section 173(g) set aside since it is not an acquittal and that it is only an acquittal which requires to be set aside by the High Court before any retrial on the same charge can proceed.

In the event, I find that the action taken by the learned president in striking off the case against the accused was wholly unjustified and erroneous in law, and I accordingly set aside the order he made and reinstate and remit the case to him with a direction, in deference to the request made by counsel for the accused, to fix an early date for the hearing of the case.

Order accordingly.

Solicitors: *H. R. Sankey & Co.*

PENANG DEVELOPMENT CORPORATION v. COLLECTOR OF LAND REVENUE PENANG & ANOR.

[O.C.J. (Arulanandom J.) June 12, 1975]
[Penang — Originating Motion No. 3 of 1975]

Land Acquisition — Application — Enlargement of time — Discretion — Land Acquisition Act, 1960, s. 38.

This was an application for enlargement of time for an application by the applicant under Land Acquisition Act 1960. The Collector had carried out acquisition proceedings in respect of a piece of land and made an order. Forms G & H were served on the applicants on December 4, 1974. The Act stipulates that an application by an applicant must be made within 6 weeks of the date of the receipt of notice under section 16 of the Act. The application was made on February 10, 1975. One of the grounds advanced by the applicant was that there had been some confusion as to who should apply as the land in question had not yet been alienated by the State to the applicant.

Held: there was a *bona fide* controversy as to who was to appeal, the amount of compensation awarded was a very substantial sum and the applicant was not wholly to be blamed for the delay. For reasons stated the court in the exercise of its discretion allowed the application.

[Editorial Note: An appeal against this decision was lodged (F.C. Civil Appeal No. 41 of 1975) but it was subsequently withdrawn, and no records were filed.]

Cases referred to:-

(1) *Re Coles* [1907] 1 K.B. 1.
(2) *In Re Helsby* [1894] 1 Q.B. 742 at 746.
(3) *Re Norman* (1886) 16 Q.B.D. 673, C.A.
(4) *Re Boycott* (1885) 29 Ch.D. 571, C.A.
(5) *Lau Cher Hian* v. *Collector of Land Revenue, Muar* [1971] 1 M.L.J. 96.

ORIGINATING MOTION.

Lim Kean Chye for the applicant.

Ghazi bin Ishak (Deputy Public Prosecutor) for the first respondent.

Lim Kean Siew (*P. R. Manecksha* with him) for the second respondent.

Arulanandom J.: This was an application by the Penang Development Corporation for an order that the period of an application by the applicant under section 38 of the Land Acquisition Act 1960 may be enlarged by the court and for consequential directions. The respondents were the Collector of Land Revenue Penang and Sungai Nibong Company Ltd.

The facts very briefly are as set out in the affidavit of the General Manager of the applicant dated February 15, 1975. According to the affidavit the contents of which are not disputed in early 1974 the applicant which is a body corporate incorporated by statute *viz.* the Penang Development Corporation Act 1971 applied to the State Authority to acquire land known as Lot No. 2164 Mukim 13 Daerah Timor Laut Pulau Pinang an approximate area of 346,433 acres (hereinafter referred to as the said land) for public, industrial, residential, commercial and agricultural purposes to wit for land development and utilization, resettlement of squatters, housing, institutional and recreational amenities in relation to integrated urban development and matters connected therewith. The Collector carried out acquisition proceedings in respect of the said land and made an award totalling $8,533,415 in respect of the said land. Forms G and H under the Land Acquisition Act 1960 were served on the applicant on December 4, 1974. The application for enlargement of time under section 38 of the Land Acquisition Act was made on February 10 while the Act stipulates it should be within six weeks of the date of receipt of notice under section 16 of the Act.

Section 38 of the Act stipulates that this time limit shall not be capable of enlargement by any court except in such special circumstances as the court may think fit. Hence there is a discretion given to the court although in a qualified manner and as long as circumstances exist which in the opinion of the court are special, the court can exercise its discretion.

First and foremost considering the length of delay it is evident there was no laches or indifference to the law — the delay was less than a month.

The reasons advanced by the applicant for the delay are as follows as stated in the affidavit May 12, 1975 of the General Manager of the applicant in paragraphs 5, 6, 7, 8 & 9: —

"5. Forms G & H were served on the applicant on December 4, 1974. There was a delay in objecting to the award as the Applicant had thought that the State Authority should make the objection because the land had yet to be alienated to the Applicant. The land still remains state land until the documents of title in respect thereof are issued to the Applicant.

6. Up to the present time the Applicant has not acquired any land on its own. It has only acted as the developing agency for the State Government on lands acquired by the State for particular public purposes. The lands will not be transferred in toto to the Applicant but alienated in phases as and when applied for. It was because of this that we submitted that the State should be the party to object as there is no assurance we will obtain all the land.

7. The State Authority on or about 30 January verbally asked the Applicant to make the necessary objections.

8. It would appear also that the Collector in taking a valuation from the Regional Valuer and in considering his report was acting against the principles of natural justice in not informing either the State Authority or the Applicant of the

report and that he was studying it. We are advised that this alone would be good ground for setting aside the award but we think an enlargement of time may be a quicker way of dealing with the matter of the award.

9. Another reason for the delay is that our assistant secretary (legal) who was a practising lawyer had applied for a practising certificate in December 1974 so that he could act for the Applicant and appear in court but till now he has had no reply to his application for a practising certificate. Recently he learnt privately from the local Bar Committee that they did not think he should appear for the Applicant in court."

In his argument before me counsel for applicant submitted that there were three factors which were special in this case. Firstly, the acquiring Authority was the State by virtue of the Land Acquisition Act. The State was acquiring for the applicant and there was confusion as to who should give notice of appeal against the award. There is no certainty that out of the large area, the applicant would ultimately get every acre of the land acquired. Hence there was confusion as to who should object. There appears to have been general confusion and not something invented to obtain leave of court. The applicant itself is not a private corporation for the benefit of private individuals. It is incorporated by the State Legislature to perform certain functions for the development of the State. It is founded by the State Government and Federal Government. The control of it is in the State Authority.

Sections 4 & 5 of the Penang Development Corporation Enactment read as follows: —

"4. The State Authority shall appoint a Chairman and a Deputy Chairman of the Corporation who, subject to the provisions of this Enactment, shall hold office for such period and on such terms as the State Authority may determine.

5. (1) The Corporation shall consist of:

(a) the Chairman;

(b) the Deputy Chairman;

(c) two ex-officio members, who shall be the persons for the time being holding the offices of the State Secretary and the State Financial Officer;

(d) not less than seven and not more than sixteen other persons to be appointed by the State Authority;

(e) three representatives of the Federal Government appointed by the Minister.

(2)(a) Without prejudice to any other written law or to sub-section (1)(c), an ex-officio member may concurrently be appointed Chairman or Deputy Chairman under his name on such terms and conditions as may be determined by the State Authority.

(b) Subject to the provisions of this Enactment and without prejudice to subsection (3), a member of the Corporation other than those mentioned in sub-paragraphs (c) and (e) of subsection (1) shall, unless he sooner resigns or his appointment is revoked, hold office for a term not exceeding three years.

(3) A member of the Corporation may be reappointed upon the expiry of his term of office.

(4) Any member of the Corporation may resign his office by notice in writing under his hand given to the Chairman.

(5) The State Authority may appoint any member of the Corporation to be temporary Chairman of the Corporation during the temporary incapacity through illness or during the temporary absence from the Federation, of the Chairman and Deputy Chairman of the Corporation.

(6) The appointment of any member other than those mentioned in sub-paragraphs (c) and (e) of subsection (1) may at any time be revoked by the State Authority without assigning any reason therefor.

(7) If any member of the Corporation, other than the Chairman, Deputy Chairman or an ex-officio member, is temporarily absent from the Federation or temporarily incapacitated through illness or any other sufficient cause from performing his duties as a member of the Corporation, another person may be appointed in his place by the State Authority but shall hold office only during such absence or incapacity of such member."

As far as the duties and powers of the applicant are concerned, they are set out in section 14 which reads as follows: —

"14. It shall be the duty of the Corporation:

(a) to promote the development of agricultural, industrial, commercial, trading and residential areas and/or projects in the State designated for such purposes; and to undertake agricultural, industrial, commercial, trading and housing enterprises;

(b) with the concurrence of the State Authority to finance, carry out or assist in carrying out any scheme of urban and rural development or redevelopment;

(bb) to develop and manage industrial estates and sites in the State;

(c) to undertake land reclamation work and participate in mining activities;

(d) to do all such other acts and things as are necessary for the exercise or performance of all or any of the functions and duties of the Corporation;

(e) to act as a local authority in areas outside local authorities if so authorised in accordance with any written law."

As far as funds are concerned, section 19 reads as follows: —

"19. There shall be established a Fund called the 'Penang Development Corporation Fund' which shall consist of:

(a) such sums as may from time to time be paid to the Corporation out of the general revenues of the State of Penang, or donated by the Government of Penang, the Federal Government or any Government in the Federation or by any other person for the purposes of the Corporation;

(b) such sums as may from time to time be raised by the Corporation by loan;

(c) all rents and proceeds of sale profits and income and other funds derived by the Corporation directly or indirectly from the property belonging to the Corporation;

(d) all such other sums as may from time to time be paid to the Corporation."

In the acquisition proceedings the State Authority carried out acquisition proceedings on behalf of applicant and it would not be unnatural for the applicant to request the State Authority to refer the matter to court. But here the State Authority having made the award was in the embarrassing position as it would be objecting to its own award. It was only on January 30, 1975 that the State Government informed the applicant to refer the matter to court. The six weeks' time for the application had already lapsed. The applicant filed their application on February 10 which does not appear to be a very long time.

The second factor which rendered circumstances special from the point of view of the applicant was that the legal officer of the applicant had applied for a Practising Certificate but had not obtained it. By itself this does not appear a valid argument as parties are entitled to enter objection in person.

The third reason advanced for seeking enlargment of time to object was that the Collector of Land Revenue had a report of the Valuation Officer before him and the applicant was not given an opportunity to refute it.

Both the respondents, *i.e.* the Collector of Land Revenue Penang and Sungai Nibong Company Ltd. opposed the application for extension of time to object and both relied on the cases of *Re Coles*[1] and *In Re Helsby*.[2] In both these cases the application for leave to appeal out of time was as a result of mistake of the parties concerned as to the time limited for appeal. The court held in these cases that a mistake made by an appellant solicitor was not a special circumstance, and that was the only reason for the delay.

In the case before me there was a genuine belief and conviction by the applicant that as the State Authority was acting on its behalf, and for other reasons stated above, that the State Authority should object to the award. But the State Authority although it had acted for the applicant was in an embarrassing position to object against its own award. Furthermore if in fact the Collector has a Regional Valuation Officer's Report before him, it would have been in the interest of justice that notwithstanding the fact that the applicant had every right to attend the inquiry, the existence of the report should have been notified to the applicant who in the last resort would have been the one to be called upon to pay the compensation.

In *Re Norman*[3] Lopes L.J. says

"The statute uses the words 'special circumstances'. Those are wide comprehensive and flexible words and I think the legislature intended them to be so and that no court can or ought to lay down any exhaustive definition of them.... It is for the discretion of the judge to say what are special circumstances in a particular case."

In *Re Boycott*[4] Bowen L.J. said

"Special circumstances I think are those which appear to the judge so special and exceptional as to justify taxation. I think no court has a right to limit the discretion of another court though it may lay down principles which are useful as a guide in the exercise of its own discretion."

In *Lau Cher Hian* v. *Collector of Land Revenue, Muar*[5] the Federal Court held that the fact that hardship would be caused to a would-be appellant was a special circumstance for the exercises of the court's discretion in enlarging the time for the appeal. In the course of his judgment Ong C.J. (as he then was) stated

"When a landowner is to be dispossessed, albeit with compensation, natural justice demands that he should be heard, unless by his own conduct he disentitles himself to such treatment. That, I believe, to be the reason why the court is given a discretion to temper the rigidity of the law. 'Special grounds' were not defined and rightly so. Was not hardship a special ground, when the party was not in the least at fault? Except that she did not possess the volume of 1960 legislation for reference was she so much to blame? I do not think that hardship, *bona fide* mistake or mere 'ignorance of the law' should be left out altogether when considering special grounds."

Here there was *bona fide* controversy as to who was to appeal, the amount of compensation awarded was a very substantial sum and the applicant is not wholly to blame for the delay.

This is only an application to bring the mater to court for review. As Lord Halsbury stated in *Re Helsby, supra* "No doubt as a general rule, if there is a real question to be argued it is better that it should be argued than that the appeal should be disposed of upon technical objection."

For the reasons stated above the court in the exercise of its discretion allowed the application and enlarged the time limited by section 38 of the Land Acquisition Act.

Finally, in passing it should be noted the applicant is not a private profit making corporation for the benefit of private individuals. It is incorporated to function for the public good and for public interest. It is a legal entity but whatever affects it adversely affects the people of the State.

Application allowed.

Solicitors: *Lim Kean Chye & Co.; Lim Kean Siew & Co.*

PUBLIC PROSECUTOR v. SEMBAN

[R.Cr.J. (Harun J.) August 18, 1975]
[Kuala Lumpur — Selangor Criminal Revision No. 4 of 1975]

Criminal Law and Procedure — Trial — Case not conducted satisfactorily — Discharge not amounting to acquittal.

Criminal Law and Procedure — Trial — Postponement — Observations on.

This case arose out of a traffic accident in 1972. The record showed a series of postponements necessitating the issue of summonses to 12 witnesses on at least five different occasions during 1973 to 1975 and for various reasons. When trial commenced on June 19, 1975 the prosecuting officer informed the court that two prosecution witnesses were absent although they had been served with the summonses. He applied to the court for warrants of arrest to issue against these witnesses. The learned magistrate thereupon stopped the trial and ordered the defendant to be discharged not amounting to an acquittal.

Held: (1) the learned magistrate should have at least heard all the prosecution witnesses who were present in court as they were attending court (in this case) for the fifth time before adjourning the case to hear the evidence of the two witnesses who were absent;

(2) when witnesses who had been served with the summons to attend court were absent, the proper course was to issue warrants for their arrest to compel attendance. A discharge, even though not amounting to an acquittal, was not the proper course, since neither of the contending parties was to blame for the absence of witnesses who had been served with the summons to attend court;

(3) in this case the order of the learned magistrate of discharge not amounting to an acquittal should be set aside and substituted therefor an order for a trial *de novo* before another magistrate.

CRIMINAL REVISION.

Abdul Kadir bin Musa (Deputy Public Prosecutor) for the Public Prosecutor.

A. S. Iaduray for the defendant.

Harun J.: I called for the records of this case on revision.

This case arises out of a traffic accident between a motor bus and a motor lorry on April 6, 1972. The Police commenced investigations almost immediately and on December 11, 1972 the Police applied to the magistrate at Telok Datok for a summons to be issued against the bus driver to answer a charge of negligent driving under section 36(i) of the Road Traffic Ordi-